

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 96

April 30, 1996, 8:05 p.m.
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ILLEGAL IMMIGRATION/Limits on Verifying Eligibility for Employment

SUBJECT: Immigration Control and Financial Responsibility Act of 1996 . . . S. 1664. Kennedy amendment No. 3816 to the Dole (for Simpson) amendment No. 3743.

ACTION: AMENDMENT REJECTED, 32-67

SYNOPSIS: As reported, S. 1664, the Immigration Control and Financial Responsibility Act of 1996, will address the issue of illegal immigration: by increasing the number of Border Patrol and investigative personnel; by establishing pilot programs to improve the system used by employers to verify citizenship or work-authorized alien status; by increasing penalties for alien smuggling and document fraud; by reforming asylum, exclusion, and deportation laws and procedures; and by reducing the use of welfare by aliens.

The Dole (for Simpson) perfecting amendment to the bill would strike all after the first word and would insert the text of the bill, as amended, with one technical change.

The Kennedy amendment would make it an offense for an employer to ask an employee for a specific document verifying eligibility (or reeligibility) for employment from among the documents that by law may be used to verify that eligibility (this bill will reduce the list of eligible documents). Further, an employer would not be permitted to refuse to accept a document presented for verification if it appeared to be reasonably genuine. An employer who followed these procedures would not be guilty of discrimination. Finally, an employer who followed these procedures would not be fined for hiring an alien who was ineligible for employment unless he had knowledge that the alien was ineligible. The term "knowledge" would be defined as meaning "actual knowledge by a person or entity that an individual is an unauthorized alien, or deliberate or reckless disregard of facts or circumstances which would lead a person or entity, through the exercise of reasonable care, to know about a certain condition."

Those favoring the amendment contended:

The Kennedy amendment would eliminate a current dilemma for employers. When employers have job applicants with foreign

(See other side)

YEAS (32)		NAYS (67)			NOT VOTING (1)	
Republicans (0 or 0%)	Democrats (32 or 68%)	Republicans (52 or 100%)	Democrats (15 or 32%)		Republicans (1)	Democrats (0)
Akaka	Kennedy	Abraham	Hutchison	Baucus	Cohen- ²	
Biden	Kerrey	Ashcroft	Inhofe	Boxer		
Bingaman	Kerry	Bennett	Jeffords	Bryan		
Bradley	Kohl	Bond	Kassebaum	Bumpers		
Breaux	Lautenberg	Brown	Kempthorne	Exon		
Byrd	Leahy	Burns	Kyl	Feinstein		
Conrad	Mikulski	Campbell	Lott	Heflin		
Daschle	Moseley-Braun	Chafee	Lugar	Hollings		
Dodd	Moynihan	Coats	Mack	Johnston		
Dorgan	Murray	Cochran	McCain	Levin		
Feingold	Pell	Coverdell	McConnell	Lieberman		
Ford	Robb	Craig	Murkowski	Nunn		
Glenn	Rockefeller	D'Amato	Nickles	Pryor		
Graham	Sarbanes	DeWine	Pressler	Reid		
Harkin	Simon	Dole	Roth	Wyden		
Inouye	Wellstone	Domenici	Santorum			
		Faircloth	Shelby			
		Frist	Simpson			
		Gorton	Smith			
		Gramm	Snowe			
		Grams	Specter			
		Grassley	Stevens			
		Gregg	Thomas			
		Hatch	Thompson			
		Hatfield	Thurmond			
		Helms	Warner			
					EXPLANATION OF ABSENCE:	
					1—Official Business	
					2—Necessarily Absent	
					3—Illness	
					4—Other	
					SYMBOLS:	
					AY—Announced Yea	
					AN—Announced Nay	
					PY—Paired Yea	
					PN—Paired Nay	

accents or darker skin, they risk being charged with discrimination if they are too vigilant in making sure those applicants are not illegal aliens, and they face employer sanctions if they are not vigilant enough. The Kennedy amendment would eliminate this dilemma by setting up a few simple rules, that if followed would protect employers from sanctions and suits. Under the Kennedy amendment, employers would be allowed to ask for documents from among the types of documents that this bill will allow to be used to verify employment eligibility, but it will not allow an employer to ask for a specific document. If a document looked reasonably genuine, it would have to be accepted, and the employer would have to keep a record of it. As long as these simple rules were followed, no discrimination suit could be brought for not hiring someone, and no sanctions could be imposed for hiring someone who turned out to be an illegal alien. The amendment would also serve to stop discrimination against people by using verification documents. Puerto Ricans, in particular, have been discriminated against by employers who have demanded green cards as proof of employability. They do not have green cards, and they are thus denied jobs. The Kennedy amendment would help both employers and employees, and thus deserves our support.

Those opposing the amendment contended:

The Kennedy amendment would not allow an employer to ask for a specific verification document, even if it had a reasonable concern that the documents that it had been presented were not genuine. Thus, if an employer were first presented with an Immigration and Naturalization Service (INS) temporary work authorization card, and if when that card expired the alien presented a Social Security card and a driver's license instead of an INS card, the employer would have to accept those new documents which are easily forged. The employer, of course, would have more than a reasonable suspicion that the new documents were fraudulent, but it would be illegal to ask for any further identification. This amendment would effectively retain current law. Employers are not allowed to ask for specific documents; they are not allowed to ask if prospective employees have work authorizations for the following year; they cannot even ask an alien what his immigration status is. Due to these rules, illegal aliens end up being employed, and their employers are subject to fines for hiring them. Under current law, and under this bill, it is already illegal for an employer to engage in such practices as asking a Puerto Rican to present a green card. This bill will only change current law by allowing an employer who has a reasonable basis to believe that it has been presented with a fraudulent document to ask for a different type of identification document. This provision will help employers avoid hiring illegal aliens. We should not eliminate it, and thus urge our colleagues to join us in voting to reject the Kennedy amendment.